

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

COLD CHAIN LOGISTICS, LLC,

Plaintiff,

v.

**1:18-CV-1272
(FJS/DJS)**

ANGELLO'S DISTRIBUTING, INC.,

Defendant.

APPEARANCES

OF COUNSEL

MCCARRON & DIESS
707 Walt Whitman Road
Second Floor
Melville, New York 11747
Attorneys for Plaintiff

GREGORY A. BROWN, ESQ.

ANGELLO'S DISTRIBUTING, INC.

NO APPEARANCE

SCULLIN, Senior Judge

ORDER

Pending before the Court is Magistrate Judge Stewart's June 19, 2019 Report-Recommendation and Order. *See* Dkt. No. 22. The parties have not filed any objections to Magistrate Judge Stewart's recommendation.

In an Order dated March 18, 2019, Magistrate Judge Stewart granted Defendant's then counsel's motion to withdraw as counsel. *See* Dkt. No. 17 at 1. Magistrate Judge Stewart also advised Defendant that, because it was a corporation, it must "appear in this action through counsel." *See id.* at 1 (citation omitted). In order to provide Defendant time to obtain counsel, Magistrate Judge Stewart stayed all proceedings for thirty days and granted Plaintiff leave to file a motion to strike Defendant's answer and/or move for a default judgment under Rule 55(a) of the

Federal Rules of Civil Procedure if new counsel did not appear for Defendant within the 30-day time period. *See id.* at 1-2.

When new counsel did not appear for Defendant within the required time frame, Plaintiff requested a pre-motion conference or, in the alternative, an order striking Defendant's answer and permitting Plaintiff to move for a default judgment. *See* Dkt. No. 18. In a Text Order dated April 26, 2019, Magistrate Judge Stewart found that a pre-motion conference was not necessary and permitted Plaintiff to file a motion to strike Defendant's answer. *See* Dkt. No. 19.

In his June 19, 2019 Report-Recommendation and Order, Magistrate Judge Stewart found that Defendant's "failure to appear through counsel after being directed to do so [was] an appropriate ground on which to strike Defendant's Answer." *See* Dkt. No. 22 at 2 (citation omitted). He also noted that "the failure to 'otherwise defend' an action is a basis for entry of a default judgment." *See id.* (citing Fed. R. Civ. P. 55(a)). For these reasons, Magistrate Judge Stewart recommended that this Court grant Plaintiff's motion to strike Defendant's answer. *See id.* at 3.

"When a party does not object to a magistrate judge's recommendation, the court reviews those recommendations for clear error or manifest injustice." *Ward v. Lee*, No. 9:16-CV-1224 (FJS/CFH), 2018 WL 3574872, *1 (N.D.N.Y. July 25, 2018) (citation omitted). "After conducting this review, 'the Court may "accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'"" *Id.* (quoting [*Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009)] (quoting 28 U.S.C. § 636(b)(1)(C))).

Having reviewed Magistrate Judge Stewart's June 19, 2019 Report-Recommendation and Order for clear error and manifest injustice and finding none, the Court hereby

ORDERS that Magistrate Judge Stewart's Report-Recommendation and Order, *see* Dkt. No.

22, is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Plaintiff's motion to strike Defendant's answer, *see* Dkt. Nos. 20-21, is **GRANTED**; and the Court further

ORDERS that Plaintiff shall file a request that the Clerk of the Court enter a default against Defendant pursuant to Rule 55(a) of the Federal Rules of Civil Procedure within **fourteen (10) days** of the date of this Order; and the Court further

ORDERS that Plaintiff shall file and serve a motion for a default judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure within **thirty (30) days** of the date of this Order; and the Court further

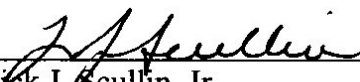
ORDERS that Plaintiff shall serve Defendant with a copy of this Order, as well as a copy of its request for entry of default and its motion for a default judgment on Defendant, by certified mail, return receipt requested, at the following address:

Joseph Angello
Angello's Distributing, Inc.
1931 Route 9
Germantown, New York 12526

and shall file Affidavits of Service with the Court evidencing proof of such service.

IT IS SO ORDERED.

Dated: July 11, 2019
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Judge